

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

David Billups,
Plaintiff/Appellant

vs

Case No. C-1-01-377

James McWeeney, et al.,
Defendants/Appellees

DEFICIENCY ORDER
(Spiegel, J.; Hogan, M.J.)

Pursuant to the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. § 1915(a)-(h), a prisoner seeking to appeal an order or judgment of the district court without prepayment of fees or security therefor must submit an application and affidavit to proceed without prepayment of fees and a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the notice of appeal obtained from the cashier of the prison at which the prisoner is or was confined. 28 U.S.C. § 1915(a)(2). Plaintiff/appellant filed a notice of appeal in this case on January 6, 2004. (Doc. 134). Plaintiff/appellant has failed to pay the full filing fee of \$255 or to submit an application and affidavit to proceed without prepayment of fees and a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the notice of appeal as required by the PLRA.

IT IS THEREFORE ORDERED THAT plaintiff/appellant submit an application and affidavit to proceed without prepayment of fees and a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the notice of appeal or pay the full filing fee of \$255 within thirty (30) days of the date of this Order. If plaintiff/appellant fails to comply with this Order, the Court of Appeals may dismiss the appeal for want of prosecution pursuant to Fed. R. App. 3(a) and the district court will assess the entire filing fee. *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1135 (6th Cir. 1997). If plaintiff/appellant's appeal is dismissed for failure to comply with this Order, the appeal will not be reinstated despite the payment of the full filing fee or subsequent correction of the deficiency. *Id.*

Any motions for extension of time must be filed within thirty (30) days of the date of the Deficiency Order. All motions for extension of time must be accompanied by a notarized statement or declaration complying with 28 U.S.C. § 1746 setting forth the date plaintiff/appellant placed the motion in the prison mail system and stating that first class postage was prepaid. If a prisoner does not receive the Deficiency Order within thirty (30) days, his motion for extension of time must also be accompanied by a notarized statement or declaration complying with 28 U.S.C. § 1746 setting forth the date he received the Deficiency Order.

A copy of this Order shall be sent to the Clerk of the Sixth Circuit Court of Appeals.

The Clerk of Court of the United States District Court is **DIRECTED** to submit to plaintiff/appellant an Application and Affidavit By Incarcerated Person to Proceed Without Prepayment of Fees form.

IT IS SO ORDERED.

Date: 1/8/2004

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge